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 CONSUMER ADVOCACY GROUP, INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11 CONSUMER ADVOCACY GROUP, INC.,
 12 in the public interest,

13 Plaintiff,

14 v.

15 BUY-LOW MARKET, INC., a California
 16 Corporation;
 17 VALU MART CO., a California
 Corporation;
 18 ACH FOOD COMPANIES, INC., a
 Delaware Corporation;
 19 and DOES 1-30,

20 Defendants.

CASE NO.

COMPLAINT FOR PENALTY AND
 INJUNCTION

Violation of Proposition 65, the Safe
 Drinking Water and Toxic Enforcement
 Act of 1986 (*Health & Safety Code*, §
 25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
 CASE (exceeds \$25,000)

21
 22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges causes of action against
 23 defendants BUY LOW MARKET, INC., VALU MART CO., ACH FOOD COMPANIES,
 24 INC., and DOES 1-30 as follows:

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THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant BUY-LOW MARKET, INC. (“BUY LOW”) is a California Corporation, qualified to do business in California, and doing business in the State of California at all relevant times herein.
3. Defendant VALU MART CO. (“VALU MART”) is a California Corporation, qualified to do business in California, and doing business in the State of California at all relevant times herein.
4. Defendant ACH FOODS COMPANIES, INC. (“ACH”) is a Delaware Corporation, qualified to do business in Delaware, and doing business in the State of California at all relevant times herein.
5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-30, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
6. At all times mentioned herein, the term “Defendants” includes BUY LOW, VALU MART, ACH, and DOES 1-30.
7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
8. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-30, was an agent, servant, or employee of each of the other

1 Defendants. In conducting the activities alleged in this Complaint, each of the
2 Defendants was acting within the course and scope of this agency, service, or
3 employment, and was acting with the consent, permission, and authorization of each of
4 the other Defendants. All actions of each of the Defendants alleged in this Complaint
5 were ratified and approved by every other Defendant or their officers or managing agents.
6 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
7 wrongful conduct of each of the other Defendants.

- 8 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
9 Defendants was a person doing business within the meaning of Health and Safety Code
10 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
11 employees at all relevant times.

12 **JURISDICTION**

- 13 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
14 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
15 those given by statute to other trial courts. This Court has jurisdiction over this action
16 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
17 violations of Proposition 65 in any Court of competent jurisdiction.

- 18 11. This Court has jurisdiction over Defendants named herein because Defendants either
19 reside or are located in this State or are foreign corporations authorized to do business in
20 California, are registered with the California Secretary of State, or who do sufficient
21 business in California, have sufficient minimum contacts with California, or otherwise
22 intentionally avail themselves of the markets within California through their manufacture,
23 distribution, promotion, marketing, or sale of their products within California to render
24 the exercise of jurisdiction by the California courts permissible under traditional notions
25 of fair play and substantial justice.

- 26 12. Venue is proper in the County of Los Angeles because one or more of the instances of
27 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
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1 because Defendants conducted, and continue to conduct, business in the County of Los
2 Angeles with respect to the consumer products that are the subject of this action.

3 **BACKGROUND AND PRELIMINARY FACTS**

4 13. In 1986, California voters approved an initiative to address growing concerns about
5 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
6 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
7 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
8 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
9 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
10 from contamination, to allow consumers to make informed choices about the products
11 they buy, and to enable persons to protect themselves from toxic chemicals as they see
12 fit.

13 14. Proposition 65 requires the Governor of California to publish a list of chemicals known to
14 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
15 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
16 chemicals and chemical families. Proposition 65 imposes warning requirements and
17 other controls that apply to Proposition 65-listed chemicals.

18 15. All businesses with ten (10) or more employees that operate or sell products in California
19 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
20 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
21 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
22 reasonable” warnings before exposing a person, knowingly and intentionally, to a
23 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

24 16. Proposition 65 provides that any person "violating or threatening to violate" the statute
25 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
26 "Threaten to violate" means "to create a condition in which there is a substantial
27 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

1 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
2 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

3 17. Plaintiff identified certain practices of manufacturers and distributors of exposing,
4 knowingly and intentionally, persons in California to the Proposition 65-listed chemicals
5 to products without first providing clear and reasonable warnings of such to the exposed
6 persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged
7 in such practice.

8 18. On February 27, 1987, the Governor of California added Lead and Lead Compounds
9 (“Lead”) to the list of chemicals known to the State to cause reproductive and
10 developmental toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Pursuant to Health and
11 Safety Code sections 25249.9 and 25249.10, twenty (20) months after the addition of
12 Lead to the list of chemicals known to the State to cause reproductive and developmental
13 toxicity, Lead became fully subject to Proposition 65 warning requirements and discharge
14 prohibitions.

15 19. On October 1, 1987, the Governor of California added Cadmium and Cadmium
16 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer
17 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code sections
18 25249.9 and 25249.10, twenty (20) months after the addition of Cadmium to the list of
19 chemicals known to the State to cause cancer, Cadmium became fully subject to
20 Proposition 65 warning requirements and discharge prohibitions.

21 20. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
22 known to the State to cause reproductive and developmental toxicity (*Cal. Code Regs.* tit.
23 27, § 27001(c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
24 twenty (20) months after the addition of Cadmium to the list of chemicals known to the
25 State to cause reproductive and developmental toxicity, Cadmium became fully subject to
26 Proposition 65 warning requirements and discharge prohibitions.

1 21. On October 1, 1992, the Governor of California added Lead to the list of chemicals
2 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
3 Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after
4 addition of Lead to the list of chemicals known to the State to cause cancer, Lead became
5 fully subject to Proposition 65 warning requirements and discharge prohibitions.

6 **SATISFACTION OF PRIOR NOTICE**

7 22. On or about December 21, 2018, Plaintiff gave notice of alleged violations of Health and
8 Safety Code section 25249.6, concerning consumer products exposures, subject to a
9 private action to BUY LOW and to the California Attorney General, County District
10 Attorneys, and City Attorneys for each city containing a population of at least 750,000
11 people in whose jurisdictions the violations allegedly occurred, concerning the product
12 Dried Mushrooms.

13 23. On or about March 21, 2019, Plaintiff gave notice of alleged violations of Health and
14 Safety Code section 25249.6, concerning consumer products exposures, subject to a
15 private action to BUY LOW, VALU MART, and to the California Attorney General,
16 County District Attorneys, and City Attorneys for each city containing a population of at
17 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
18 the product Ground Turmeric.

19 24. On or about April 25, 2019, Plaintiff gave notice of alleged violations of Health and
20 Safety Code section 25249.6, concerning consumer products exposures, subject to a
21 private action to BUY LOW, ACH, and to the California Attorney General, County
22 District Attorneys, and City Attorneys for each city containing a population of at least
23 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
24 product Ground Sage.

25 25. Before sending the notices of alleged violation, Plaintiff investigated the consumer
26 products involved, the likelihood that such products would cause users to suffer
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1 significant exposures to Lead and/or Cadmium, and the corporate structure of each of the
2 Defendants.

3 26. Plaintiff's notices of alleged violation included a Certificate of Merit executed by the
4 attorney for the noticing party, CAG. The Certificates of Merit stated that the attorney
5 for Plaintiff who executed the certificates had consulted with at least one person with
6 relevant and appropriate expertise who reviewed data regarding the exposures to Lead
7 and/or Cadmium, the subject Proposition 65-listed chemicals of this action. Based on that
8 information, the attorney for Plaintiff who executed the Certificates of Merit believed
9 there was a reasonable and meritorious case for this private action. The attorney for
10 Plaintiff attached to the Certificates of Merit served on the Attorney General the
11 confidential factual information sufficient to establish the basis of the Certificates of
12 Merit.

13 27. Plaintiff's notices of alleged violations also included a Certificate of Service and a
14 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
15 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

16 28. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
17 gave notices of the alleged violations to BUY LOW, VALU MART, ACH, and the public
18 prosecutors referenced in Paragraphs 22-24.

19 29. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
20 any applicable district attorney or city attorney has commenced and is diligently
21 prosecuting an action against the Defendants.

22 **FIRST CAUSE OF ACTION**

23 **(By CONSUMER ADVOCACY GROUP, INC. and against BUY LOW and DOES**
24 **1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
25 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

26 **Dried Mushrooms**

27 30. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
28 reference paragraphs 1 through 29 of this Complaint as though fully set forth herein.

1 31. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
2 distributor, promoter, or retailer of Dried Black Mushrooms including but not limited to
3 “DYNASTY;” “SHIITAKE;” “Dried Black Mushrooms;” “NET WT. 1 OZ. (28.35g);”
4 “IMPORTED BY JFC INTERNATIONAL INC;” “PRODUCT OF CHINA;” “F 035
5 SJ;” “0 11152 02401 1” (“Dried Mushrooms”).

6 32. Dried Mushrooms contain Cadmium.

7 33. Defendants knew or should have known that Cadmium has been identified by the State of
8 California as a chemical known to cause cancer and reproductive toxicity and therefore
9 was subject to Proposition 65 warning requirements. Defendants were also informed of
10 the presence of Cadmium in Dried Mushrooms within Plaintiff's notice of alleged
11 violations further discussed above at Paragraph 22.

12 34. Plaintiff's allegations regarding Dried Mushrooms concerns “[c]onsumer products
13 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,
14 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
15 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
16 *25602(b)*. Dried Mushrooms are consumer products, and, as mentioned herein,
17 exposures to Cadmium took place as a result of such normal and foreseeable
18 consumption and use.

19 35. Plaintiff is informed, believes, and thereon alleges that between December 21, 2015, and
20 the present, each of the Defendants knowingly and intentionally exposed California
21 consumers and users of Dried Mushrooms, which Defendants manufactured, distributed,
22 or sold as mentioned above, to Cadmium, without first providing any type of clear and
23 reasonable warning of such to the exposed persons before the time of exposure.
24 Defendants have distributed and sold Dried Mushrooms in California. Defendants know
25 and intend that California consumers will use and consume Dried Mushrooms, thereby
26 exposing them to Cadmium. Defendants thereby violated Proposition 65.

1 36. The principal routes of exposure are through, ingestion and inhalation, including hand to
2 mouth pathways, inhalation, and trans-dermal absorption. Persons sustain exposures by
3 eating and consuming Dried Mushrooms, handling Dried Mushrooms without wearing
4 gloves or any other personal protective equipment, or by touching bare skin or mucous
5 membranes with gloves after handling Dried Mushrooms, as well as through direct and
6 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
7 matter dispersed from Dried Mushrooms.

8 37. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
9 Proposition 65 as to Dried Mushrooms have been ongoing and continuous, as Defendants
10 engaged and continue to engage in conduct which violates Health and Safety Code
11 section 25249.6, including the manufacture, distribution, promotion, and sale of Dried
12 Mushrooms, so that a separate and distinct violation of Proposition 65 occurred each and
13 every time a person was exposed to Cadmium by Dried Mushrooms as mentioned herein.

14 38. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
15 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
16 violations alleged herein will continue to occur into the future.

17 39. Based on the allegations herein, Defendants are liable for civil penalties of up to
18 \$2,500.00 per day per individual exposure to Cadmium from Dried Mushrooms, pursuant
19 to Health and Safety Code section 25249.7(b).

20 40. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
21 filing this Complaint.

22 **SECOND CAUSE OF ACTION**

23 **(By CONSUMER ADVOCACY GROUP, INC. and against BUY LOW, VALU**
24 **MART, and DOES 11-20 for Violations of Proposition 65, The Safe Drinking Water**
25 **and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

26 **Ground Spices**

27 41. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
28 reference paragraphs 1 through 40 of this Complaint as though fully set forth herein.

1 42. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
2 distributor, promoter, or retailer of Ground Turmeric, identified as “ADONIS SPICES;”
3 “TURMERIC;” “LOT: TU-0064162525;” “MADE IN LEBANON;” “NET WT: 283G
4 (10 OZ);” “BEST BEFORE: 06/2019-KRADJIAN IMPORTING, INC.,” “PRODUCED
5 BY: GENERAL COMPANY FOR LEBANON PRODUCTS;” “5 281094 165126”
6 (“Ground Turmeric”).

7 43. The scope of the Second Cause of Action as to GROUND TURMERIC is limited to the
8 specific UPC Number “5 281094 165126” and the specific Lot Number “TU-
9 0064162525”.

10 44. Ground Turmeric contains Lead.

11 45. Defendants knew or should have known that Lead has been identified by the State of
12 California as a chemical known to cause cancer and reproductive toxicity and therefore
13 was subject to Proposition 65 warning requirements. Defendants were also informed of
14 the presence of Lead in Ground Turmeric within Plaintiff's notice of alleged violations
15 further discussed above at Paragraph 23.

16 46. Plaintiff's allegations regarding Ground Turmeric concerns “[c]onsumer products
17 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,
18 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
19 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
20 *25602(b)*. Ground Turmeric are consumer products, and, as mentioned herein, exposures
21 to Lead took place as a result of such normal and foreseeable consumption and use.

22 47. Plaintiff is informed, believes, and thereon alleges that between March 21, 2016, and the
23 present, each of the Defendants knowingly and intentionally exposed California
24 consumers and users of Ground Turmeric, which Defendants manufactured, distributed,
25 or sold as mentioned above, to Lead, without first providing any type of clear and
26 reasonable warning of such to the exposed persons before the time of exposure.

27 Defendants have distributed and sold Ground Turmeric in California. Defendants know
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1 and intend that California consumers will use and consume Ground Turmeric, thereby
2 exposing them to Lead. Defendants thereby violated Proposition 65.

3 48. The principal routes of exposure are through, ingestion, especially direct (oral) ingestion,
4 inhalation, and trans-dermal absorption. Persons sustain exposures by eating and
5 consuming Ground Turmeric, and additionally by handling Ground Turmeric without
6 wearing gloves or any other personal protective equipment, or by touching bare skin or
7 mucous membranes with gloves after handling Ground Turmeric, as well as through
8 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in
9 particulate matter dispersed from Ground Turmeric.

10 49. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
11 Proposition 65 as to Ground Turmeric have been ongoing and continuous, as Defendants
12 engaged and continue to engage in conduct which violates Health and Safety Code
13 section 25249.6, including the manufacture, distribution, promotion, and sale of Ground
14 Turmeric, so that a separate and distinct violation of Proposition 65 occurred each and
15 every time a person was exposed to Lead by Ground Turmeric as mentioned herein.

16 50. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
17 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
18 violations alleged herein will continue to occur into the future.

19 51. Based on the allegations herein, Defendants are liable for civil penalties of up to
20 \$2,500.00 per day per individual exposure to Lead from Ground Turmeric, pursuant to
21 Health and Safety Code section 25249.7(b).

22 52. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
23 filing this Complaint.

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1 **THIRD CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against BUY LOW, ACH, and**
3 **DOES 21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
4 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

4 **Ground Spices**

5 53. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
6 reference paragraphs 1 through 52 of this Complaint as though fully set forth herein.

7 54. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
8 distributor, promoter, or retailer of Ground Sage, identified as “Trader’s Choice ®”;
9 “Ground Sage”; “Packed by Weight Net Wt. 1 oz. (29g)”; “UPC 047600 00075 7”; “Dist.
10 by ACH Food Companies, Inc. Memphis, TN 38016 USA, LOT/BATCH #032A7 B”
11 (“Ground Sage”).

12 55. The scope of the Third Cause of Action as to GROUND SAGE is limited to the specific
13 UPC Number “047600 00075 7” and the specific Lot Number “032A7 B”.

14 56. Ground Sage contains Lead.

15 57. Defendants knew or should have known that Lead has been identified by the State of
16 California as a chemical known to cause cancer and reproductive toxicity and therefore
17 was subject to Proposition 65 warning requirements. Defendants were also informed of
18 the presence of Lead in Ground Sage within Plaintiff’s notice of alleged violations further
19 discussed above at Paragraph 24.

20 58. Plaintiff’s allegations regarding Ground Sage concerns “[c]onsumer products
21 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
22 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
23 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §
24 25602(b). Ground Sage are consumer products, and, as mentioned herein, exposures to
25 Lead took place as a result of such normal and foreseeable consumption and use.

26 59. Plaintiff is informed, believes, and thereon alleges that between April 25, 2016, and the
27 present, each of the Defendants knowingly and intentionally exposed California
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1 consumers and users of Ground Sage, which Defendants manufactured, distributed, or
2 sold as mentioned above, to Lead, without first providing any type of clear and
3 reasonable warning of such to the exposed persons before the time of exposure.

4 Defendants have distributed and sold Ground Sage in California. Defendants know and
5 intend that California consumers will use and consume Ground Sage, thereby exposing
6 them to Lead. Defendants thereby violated Proposition 65.

7 60. The principal routes of exposure are through, ingestion, especially direct (oral) ingestion,
8 inhalation, and trans-dermal absorption. Persons sustain exposures by eating and
9 consuming Ground Sage, and additionally by handling Ground Sage without wearing
10 gloves or any other personal protective equipment, or by touching bare skin or mucous
11 membranes with gloves after handling Ground Sage, as well as through direct and
12 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
13 matter dispersed from Ground Sage.

14 61. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
15 Proposition 65 as to Ground Sage have been ongoing and continuous, as Defendants
16 engaged and continue to engage in conduct which violates Health and Safety Code
17 section 25249.6, including the manufacture, distribution, promotion, and sale of Ground
18 Sage, so that a separate and distinct violation of Proposition 65 occurred each and every
19 time a person was exposed to Lead by Ground Sage as mentioned herein.

20 62. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
21 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
22 violations alleged herein will continue to occur into the future.

23 63. Based on the allegations herein, Defendants are liable for civil penalties of up to
24 \$2,500.00 per day per individual exposure to Lead from Ground Sage, pursuant to Health
25 and Safety Code section 25249.7(b).

26 64. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
27 filing this Complaint.

